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Ms. Maris

## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-200877

DATE: April 28, 1981

MATTER OF: David A. Clary

DIGEST:

[Protest of Forest Service Contract Award]

1. Where RFP provides only that cost will not necessarily be controlling in determining awardee, cost and technical factors are regarded as of substantially equal weight in proposal evaluation. However, agency's future RFPs should contain more precise statements of relative importance of cost and technical considerations.
2. In negotiated procurement where cost and technical factors are of substantially equal weight in proposal evaluation, there is no basis to object to award to proposal priced \$2,200 more than one rated lower in technical factors, since agency reasonably concluded that higher cost proposal provided better value to Government.
3. GAO is aware of no law or regulation which would be contravened by disclosure to technical evaluation panel of cost rankings of offerors.

David A. Clary [protests the award of a contract to Capitol Communications Systems, Inc., under request for proposals (RFP) No. NE-80-19 issued by the Forest Service for a manuscript and publication design for a book. Award was made without discussions on the basis of initial proposals.]

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*The low bidder*  
Mr. Clary, who submitted the lowest price, alleges that his low price was not given sufficient consideration in the selection process. Mr. Clary further expresses concern over "the apparent absence of some measurable criteria to be used in comparing one proposal to another, or of some systematic way in which 'price and other factors' can be rationally weighed."

{The contracting officer states} that Capitol's {technically superior proposal} priced at \$15,800, {essentially provided a better value to the Government than Mr. Clary's lower priced} (\$13,632) {technically acceptable proposal.}

The protest is dismissed in part and denied in part.

The RFP contained the following statement concerning the award of the contract:

"The contract will be awarded to that responsible offeror whose proposal conforming to the solicitation is most advantageous to the Government. One step procedure provides for the competitive evaluation of technical proposals with the award decision based on the best value to the Government.

"The procedure requires the use of an evaluation which provides the means to competitively evaluate the quality of the technical proposals, price and other factors considered.

\* \* \* \* \*

"\* \* \* the Government reserves the right to award to other than the person submitting the lowest offer."

[Mr. Clary's concern with the absence of sufficient evaluation criteria in the RFP involves an impropriety in the solicitation document.] Our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980), require that [a protest based upon an alleged solicitation impropriety which is apparent prior to proposal submission be filed by that time. Since Mr. Clary's protest on this issue was filed after the time for submission of initial proposals, it is untimely and will not be considered on the merits.]

[Concerning whether Mr. Clary's price proposal was given appropriate consideration, in a negotiated procurement lowest cost is not necessarily the determining factor in making an award,] and an agency therefore may select a highly rated technical proposal instead of a lower rated, lower cost one [if the agency reasonably determines that the superior performance expected from the higher rated offeror justifies the additional cost involved.] See Federal Procurement Regulations (FPR) § 1-3.805-1 (1964 ed.); Olin Corporation, Energy Systems Operations, B-187311, January 27, 1977, 77-1 CPD 68. In making this determination, agency officials necessarily are given a considerable range of discretion, and [their judgment therefore will not be disturbed by our Office unless clearly without a reasonable basis.] University of New Orleans, B-184194, May 26, 1978, 78-1 CPD 401.

The extent to which such cost/technical trade-offs may be made is governed by the evaluation scheme set forth in the RFP. Automated Systems Corporation, B-184835, February 23, 1976, 76-1 CPD 124. [While the RFP in this case did not contain a precise statement of the relative importance of price and technical factors, it did provide that award would not necessarily be made to the person submitting the lowest offer and thus that cost would not necessarily be controlling in determining the awardee.] Under these circumstances, cost and technical factors would be afforded substantially equal weight. See University of New Orleans, supra.

The record shows that the evaluation panel fully considered Mr. Clary's lower price, but concluded that Capitol's proposal, although approximately \$2,200 higher, provided a better value to the Government. Specifically, the evaluation panel found that Capitol's technical approach and the qualifications of its staff were superior to those of Mr. Clary. The panel rated the proposals in three general technical areas: "Statement of Work," "Experience", and "Qualifications." In these categories, Capitol was rated, respectively, "Excellent," "Very Good," "Very Good." Mr. Clary was rated "Very Good," "Very Good," "Good [with respect to Mr. Clary]/Fair [with respect to other staff]." Under these circumstances, we cannot conclude that the Forest Service's decision to award to Capitol at \$15,800 instead of to Mr. Clary at \$13,632 had no reasonable basis. Thus, Mr. Clary's contention that his price was not given sufficient consideration in the evaluation of proposals is without merit.

Mr. Clary also questions whether the contracting officer acted properly in providing the technical evaluation panel with the cost rankings of the offerors. We note that it appears from the record that this information was not provided to the panel until after they had completed their evaluation of the proposals. In any event, we are aware of no law or regulation which would be contravened by such a disclosure. See Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458 at p. 33.

While we have found no basis to object to the contract award under the instant solicitation, we do believe that in the future the Forest Service's RFPs should contain more precise indication of the relative importance of price and technical considerations. Further, we note that the RFP in this case did not, in fact, contain any explicit statement of the technical evaluation factors to be applied. While we have found Mr. Clary's protest on this issue to be untimely with respect to this particular procurement, we nonetheless point out that we have frequently stated that offerors should be advised of both the evaluation factors to be used and the relative importance of each of these factors. Signatron, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 386; National Health

Services, Inc., B-186186, June 23, 1976, 76-1 CPD 401.  
By letter of today, we are bringing these matters to  
the attention of the Secretary of Agriculture.

[The protest is dismissed in part and denied in  
part.]

*Milton J. Aroslan*

Acting Comptroller General  
of the United States